

ESTTA Tracking number: **ESTTA200796**

Filing date: **03/26/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ALZA Corporation
Granted to Date of previous extension	03/26/2008
Address	1900 Charleston Road P. O. Box 7210 Mountain View, CA 94039-7210 UNITED STATES

Attorney information	Christen M. English, Esq. Drinker Biddle & Reath LLP 1500 K St., N.W.Suite 1100 Washington, DC 20005 UNITED STATES christen.english@dbr.com, andrea.engel@dbr.com, jaye.yung@dbr.com
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Applicant Information

Application No	78851378	Publication date	11/27/2007
Opposition Filing Date	03/26/2008	Opposition Period Ends	03/26/2008
Applicant	Biovail Laboratories International SRL Collymore Chelston Park Building 2 Ground Floor St. Michael, BARBADOS		

Goods/Services Affected by Opposition

<p>Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations and substances for the prevention, treatment and alleviation of stress; pharmaceutical preparations and substances for the prevention, treatment and alleviation of diabetes; pharmaceutical preparations and substances for controlling insulin levels; pharmaceutical preparations and substances for the prevention, treatment and alleviation of hypertension; pharmaceutical preparations and substances for the prevention, treatment and alleviation of angina; pharmaceutical preparations and substances for the cessation of smoking; pharmaceutical preparations and substances for the prevention and treatment of sexually transmitted diseases; pharmaceutical preparations and substances for the prevention and treatment of herpes; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the central nervous system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of depression; anti-depressants; pharmaceutical preparations and substances for the prevention, treatment and alleviation of sleep disorders; pharmaceutical preparations and substances for the prevention, treatment and alleviation of anxiety; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the cardiovascular system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of acute myocardial infarctions; pharmaceutical preparations and substances for the</p>

prevention, treatment and alleviation of symptomatic congestive heart failure; pharmaceutical preparations and substances for the prevention, treatment and alleviation of asymptomatic left ventricular dysfunction; pharmaceutical preparations and substances, namely, fibrinolytic or thrombolytic agents; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the respiratory system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the endocrine system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the immune system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the musculo-skeletal system, namely, bone diseases and bone degenerative conditions; pharmaceutical preparations and substances for the prevention, treatment and alleviation of pain and inflammation, namely, pain relief medication and anti-inflammatories; pharmaceutical preparations and substances for the prevention, treatment and alleviation of migraines; pharmaceutical preparations and substances, namely, medicated skin care preparations for use in dermatology, namely, dermatitis and skin pigmentation diseases; pharmaceutical preparations and substances for use in oncology; pharmaceutical preparations and substances for use in ophthalmology; pharmaceutical preparations and substances for the treatment of polycystic ovary syndrome; pharmaceutical preparations and substances for the treatment of infertility; pharmaceutical preparations and substances for the prevention, treatment and alleviation of circulatory, neurologic, alimentary, auto-immune, pulmonary, musculoskeletal, lymphatic, gastrointestinal, bone sensory, viral, urinary, renal, infectious or metabolic diseases, illnesses, disorders or conditions; metformin; diltiazem; tramadol; carvedilol; bupropion; metoprolol; citalopram; zolpidem; fluoxetine; venlafaxine; lorazepam; and sumatriptan

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2355749	Application Date	10/23/1997
Registration Date	06/06/2000	Foreign Priority Date	NONE
Word Mark	ALZA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/27 First Use In Commerce: 1998/10/27 product development, namely, developing pharmaceutical products in specialized dosage forms, namely, transdermal plasters, transdermal patches, iontophoretic patches, osmotic pumps, controlled drug-releasing polymer matrices, and implantable drug delivery devices		

U.S. Registration No.	2619940	Application Date	11/01/2000
Registration Date	09/17/2002	Foreign Priority Date	NONE
Word Mark	ALZA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00		

	<p>Pharmaceuticals namely, pilocarpine for treating glaucoma, progesterone for contraception, oxybutynin for urinary and bladder conditions, methylphenidate for treatment of attention deficit disorder, systemic alkalizers, amifostine for treating toxic effects of chemotherapy, pentosan polysulfate sodium for treatment of interstitial cystitis, clotrimazole for treatment of fungal infections, and tetracycline for treatment of bacterial infections</p> <p>Class 010. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00</p> <p>medical devices namely, osmotic pumps, intrauterine devices, implantable periodontal fibers, implant implanting equipment and ocular inserts</p>
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U.S. Registration No.	2815218	Application Date	10/23/1997
Registration Date	02/17/2004	Foreign Priority Date	NONE
Word Mark	ALZA		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2000/00/00 First Use In Commerce: 2000/00/00</p> <p>pharmaceutical products, namely, those in specialized dosage forms, namely, transdermal plasters and transdermal patches used in pain relief, treatment of hypogonadism, and smoking cessation; iontophoretic patches for use in pain relief; controlled drug-releasing polymer matrices, for use in treatment of conditions of the oral cavity; and pharmaceutical products in conventional dosage forms, namely, fungicides, for treating oral fungal infections, alkalinizing agents for maintaining alkaline urine, alkalinizing agents for treating acidosis, alkalinizing agents for neutralizing gastric acid, bladder control drugs, anti-cancer drugs, drugs for relieving bladder pain, drugs for treating interstitial cystitis, drugs for reducing toxicity associated with chemotherapy, drugs for treating oral candidiasis, dietary and nutritional supplements, and drugs for use in the field of urology and oncology; and osmotic pumps for use in delivering cough/cold medications and for use in the field of urology and oncology</p> <p>Class 010. First use: First Use: 2001/00/00 First Use In Commerce: 2001/00/00</p> <p>implantable drug delivery devices for use in experimental animals and for administering leuprolide in the treatment of prostate cancer</p>		

Attachments	<p>75378321#TMSN.gif (1 page)(bytes)</p> <p>76159119#TMSN.gif (1 page)(bytes)</p> <p>75378154#TMSN.gif (1 page)(bytes)</p> <p>ASOLZA - Opposition.pdf (10 pages)(424750 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christen M. English/
Name	Christen M. English, Esq.
Date	03/26/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Ser. No. 78/851,378– ASOLZA
Published: November 27, 2007

ALZA CORPORATION, _____ :
Opposer, :
v. : Opposition No. _____
BIOVAIL LABORATORIES INTERNATIONAL SRL, :
Applicant. _____ :

NOTICE OF OPPOSITION

ALZA CORPORATION, a Delaware corporation, having an address of 1900 Charleston Road, P.O. Box 7210, Mountain View, California 94039-7210 (“Opposer”), believes that it will be damaged by the registration of Ser. No. 78/851,378 – ASOLZA for “pharmaceutical preparations and substances for the prevention, treatment and alleviation of stress; pharmaceutical preparations and substances for the prevention, treatment and alleviation of diabetes; pharmaceutical preparations and substances for controlling insulin levels; pharmaceutical preparations and substances for the prevention, treatment and alleviation of hypertension; pharmaceutical preparations and substances for the prevention, treatment and alleviation of angina; pharmaceutical preparations and substances for the cessation of smoking; pharmaceutical preparations and substances for the prevention and treatment of sexually transmitted diseases; pharmaceutical preparations and substances for the prevention and treatment of herpes; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the central nervous system;

pharmaceutical preparations and substances for the prevention, treatment and alleviation of depression; anti-depressants; pharmaceutical preparations and substances for the prevention, treatment and alleviation of sleep disorders; pharmaceutical preparations and substances for the prevention, treatment and alleviation of anxiety; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the cardio-vascular system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of acute myocardial infarctions; pharmaceutical preparations and substances for the prevention, treatment and alleviation of symptomatic congestive heart failure; pharmaceutical preparations and substances for the prevention, treatment and alleviation of asymptomatic left ventricular dysfunction; pharmaceutical preparations and substances, namely, fibrinolytic or thrombolytic agents; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the respiratory system. pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the endocrine system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the immune system; pharmaceutical preparations and substances for the prevention, treatment and alleviation of disorders, diseases, conditions and ailments of the musculo-skeletal system, namely, bone diseases and bone degenerative conditions; pharmaceutical preparations and substances for the prevention, treatment and alleviation of pain and inflammation, namely, pain relief medication and anti-inflammatories; pharmaceutical preparations and substances for the prevention, treatment and alleviation of migraines; pharmaceutical preparations and substances, namely, medicated skin care preparations for use in dermatology, namely, dermatitis and skin pigmentation diseases; pharmaceutical preparations and substances for use in oncology;

pharmaceutical preparations and substances for use in ophthalmology; pharmaceutical preparations and substances for the treatment of polycystic ovary syndrome; pharmaceutical preparations and substances for the treatment of infertility; pharmaceutical preparations and substances for the prevention, treatment and alleviation of circulatory, neurologic, alimentary, auto-immune, pulmonary, musculoskeletal, lymphatic, gastrointestinal, bone sensory, viral, urinary, renal, infectious or metabolic diseases, illnesses, disorders or conditions; metformin; diltiazem; tramadol; carvedilol; bupropion; metoprolol; citalopram; zolpidem; fluoxetine; venlafaxine; lorazepam; and sumatriptan” in Class 5; filed on an intent-to-use basis on March 31, 2006 by Biovail Laboratories International SRL International, a Barbados International Society, having an address of Collymore Chelston Park Building 2, Ground Floor, St. Michael Barbados (“Applicant”), and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for its opposition, Opposer states:

1. Opposer has adopted and is using the ALZA mark in connection with drug delivery systems, a broad range of pharmaceutical preparations and developing pharmaceutical products in specialized dosage form.
2. Opposer has been continuously using the ALZA mark for a broad range of pharmaceutical preparations and drug delivery systems since at least as early as 1974.
3. Opposer has been continuously using the ALZA mark in connection with developing pharmaceutical products in specialized dosage forms since at least as early as October 27, 1998.
4. To protect its rights, Opposer owns:
 - a. Reg. No. 2,355,749 – ALZA & Design for “product development, namely, developing pharmaceutical products in specialized dosage forms, namely,

transdermal plasters, transdermal patches, iontophoretic patches, osmotic pumps, controlled drug-releasing polymer matrices, and implantable drug delivery devices” in Class 42; registered on June 6, 2000; based on use since October 27, 1998.

b. Reg. No. 2,619,940 – ALZA (Stylized) for “pharmaceuticals namely, pilocarpine for treating glaucoma, progesterone for contraception, oxybutynin for urinary and bladder conditions, methylphenidate for treatment of attention deficit disorder, systemic alkalizers, amifostine for treating toxic effects of chemotherapy, pentosan polysulfate sodium for treatment of interstitial cystitis, clotrimazole for treatment of fungal infections, and tetracycline for treatment of bacterial infections” in Class 5 and “medical devices namely, osmotic pumps, intrauterine devices, implantable periodontal fibers, implant implanting equipment and ocular inserts” in Class 10; registered on September 17, 2002; based on use since at least as early as 1974.

c. Reg. No. 2,815,218 – ALZA & Design for “pharmaceutical products, namely, those in specialized dosage forms, namely, transdermal plasters and transdermal patches used in pain relief, treatment of hypogonadism, and smoking cessation; iontophoretic patches for use in pain relief; controlled drug-releasing polymer matrices, for use in treatment of conditions of the oral cavity; and pharmaceutical products in conventional dosage forms, namely, fungicides, for treating oral fungal infections, alkalinizing agents for maintaining alkaline urine, alkalinizing agents for treating acidosis, alkalinizing agents for neutralizing gastric acid, bladder control drugs, anti-cancer drugs, drugs for relieving bladder pain, drugs for treating interstitial cystitis, drugs for reducing toxicity associated with chemotherapy, drugs for treating oral candidiasis, dietary and nutritional supplements, and drugs for use in the field of urology and oncology; and osmotic pumps for use in delivering cough/cold medications and for use in the field of urology and oncology” in Class 5 and “drug delivery devices for use in experimental animals and for administering leuprolide in the treatment of prostate cancer” in Class 10; registered on February 17, 2004; based on use in Class 5 since at least as early as 2000 and use in Class 10 since at least as early as 2001.

Copies of the foregoing registrations are attached hereto as Exhibits A-C.

5. Since before the March 31, 2006 filing date of Ser. No. 78/851,378– ASOLZA, Opposer has sold millions of dollars of pharmaceutical preparations, drug delivery systems and pharmaceutical product development services in connection with the ALZA mark.

6. Opposer has extensively advertised products and services identified by the ALZA mark to the medical community.
7. By virtue of its extensive sales and promotion, Opposer's ALZA mark has become well-known in the medical community and has acquired a high degree of distinctiveness indicating source in the Opposer.
8. On information and belief, Applicant did not commence use of the ASOLZA mark in the United States for the goods covered by application Ser. No. 78/851,378 prior to the March 31, 2006 filing date.
9. On information and belief, Applicant has not commenced use of the ASOLZA mark in the United States for the goods covered by application Ser. No. 78/851,378 prior to the filing of this opposition.
10. On information and belief, Applicant has never used the ASOLZA mark in the United States for the goods covered by application Ser. No. 78/851,378.
11. Applicant's ASOLZA mark is substantially similar to Opposer's ALZA mark in appearance, sound and commercial impression.
12. The goods and services on which Opposer uses the ALZA mark and the goods covered by application Ser. No. 78/851,378 are identical and highly related.
13. The goods and services on which Opposer uses the ALZA mark and the goods covered by application Ser. No. 78/851,378 are likely to be sold through the same channels of trade.
14. The goods on which Opposer uses the ALZA mark and the goods covered by application Ser. No. 78/851,378 are sold to the same class of consumers.

15. The use and registration by Applicant of the ASOLZA mark for the goods identified in application Ser. No. 78/851,378 is likely to cause confusion, mistake or deception by having the public erroneously assume or believe that the goods emanate from Opposer, or are in some other way associated or connected with Opposer's prior used ALZA mark all to Opposer's irreparable damage.

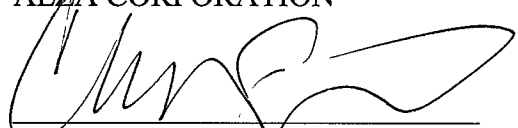
For the reasons set forth above, Opposer believes and believing asserts that it will be damaged by the registration of Ser. No. 78/851,378 – ASOLZA for the goods covered by the application. Accordingly, Opposer prays that this opposition be sustained, and that Applicant be refused registration of the ASOLZA mark for the goods set forth in application Ser. No. 78/851,378.

The \$300.00 filing fee has been submitted electronically. Should additional fees be required please charge them to the deposit account of Opposer's counsel, No. 50-0573.

Respectfully submitted,

ALZA CORPORATION

By:



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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served on counsel for Applicant at the following address of record, by first class mail, postage prepaid, this 26th day of March 2008:

James R. Menker
Holley & Menker, P.A.
PO Box 331937
Atlantic Beach FL 32233

Deborah C. Clark

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,355,749

United States Patent and Trademark Office

Registered June 6, 2000

**SERVICE MARK
PRINCIPAL REGISTER**



ALZA CORPORATION (DELAWARE CORPORATION)
950 PAGE MILL ROAD
(P.O. BOX 10950)
PALO ALTO, CA 943030802

FOR: PRODUCT DEVELOPMENT, NAMELY, DEVELOPING PHARMACEUTICAL PRODUCTS IN SPECIALIZED DOSAGE FORMS, NAMELY, TRANSDERMAL PLASTERS, TRANSDERMAL PATCHES, IONTOPHORETIC PATCHES, OSMOTIC PUMPS, CONTROLLED DRUG-RELEASING POLYMER MATRICES, AND IMPLANTABLE DRUG DE-

LIVERY DEVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-27-1998; IN COMMERCE 10-27-1998.

OWNER OF U.S. REG. NOS. 1,409,074 AND 1,413,180.

THE DRAWING IS LINED FOR THE COLOR BLUE.

SN 75-378,321, FILED 10-23-1997.

SALLY SHIN, EXAMINING ATTORNEY

EXHIBIT A

Int. Cls.: 5 and 10

Prior U.S. Cls.: 6, 18, 26, 39, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,619,940

Registered Sep. 17, 2002

**TRADEMARK
PRINCIPAL REGISTER**

**ALZA CORPORATION (DELAWARE CORPORATION)
1900 CHARLESTON ROAD
P.O. BOX 7210
MOUNTAIN VIEW, CA 940397210**

FOR: PHARMACEUTICALS NAMELY, PILOCARPINE FOR TREATING GLAUCOMA, PROGESTERONE FOR CONTRACEPTION, OXYBUTYRIN FOR URINARY AND BLADDER CONDITIONS, METHYLPHENIDATE FOR TREATMENT OF ATTENTION DEFICIT DISORDER, SYSTEMIC ALKALIZERS, AMIFOSTINE FOR TREATING TOXIC EFFECTS OF CHEMOTHERAPY, PENTOSAN POLYSULFATE SODIUM FOR TREATMENT OF INTERSTITIAL CYSTITIS, CLOTRIMAZOLE FOR TREATMENT OF FUNGAL INFECTIONS, AND TETRACYCLINE FOR TREATMENT OF BACTER-

IAL INFECTIONS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 0-0-1974; IN COMMERCE 0-0-1974.

FOR: MEDICAL DEVICES NAMELY, OSMOTIC PUMPS, INTRAUTERINE DEVICES, IMPLANTABLE PERIODONTAL FIBERS, IMPLANT IMPLANTING EQUIPMENT AND OCULAR INSERTS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 0-0-1974; IN COMMERCE 0-0-1974.

OWNER OF U.S. REG. NO. 1,413,180.

SER. NO. 76-159,119, FILED 11-1-2000.

GREGORY DUMONT, EXAMINING ATTORNEY

Int. Cls.: 5 and 10

Prior U.S. Cls.: 6, 18, 26, 39, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,815,218

Registered Feb. 17, 2004

**TRADEMARK
PRINCIPAL REGISTER**



ALZA CORPORATION (DELAWARE CORPORATION)
1900 CHARLETON ROAD
P. O. BOX 7210
MOUNTAIN VIEW, CA 940397210

FOR: PHARMACEUTICAL PRODUCTS, NAME-
LY, THOSE IN SPECIALIZED DOSAGE FORMS,
NAMELY, TRANSDERMAL PLASTERS AND
TRANSDERMAL PATCHES USED IN PAIN RELIEF,
TREATMENT OF HYPOGONADISM, AND SMOK-
ING CESSATION; IONTOPHORETIC PATCHES FOR
USE IN PAIN RELIEF; CONTROLLED DRUG-RE-
LEASING POLYMER MATRICES, FOR USE IN
TREATMENT OF CONDITIONS OF THE ORAL
CAVITY; AND PHARMACEUTICAL PRODUCTS
IN CONVENTIONAL DOSAGE FORMS, NAMELY,
FUNGICIDES, FOR TREATING ORAL FUNGAL
INFECTIONS, ALKALINIZING AGENTS FOR
MAINTAINING ALKALINE URINE, ALKALINIZ-
ING AGENTS FOR TREATING ACIDOSIS, ALKA-
LINIZING AGENTS FOR NEUTRALIZING
GASTRIC ACID, BLADDER CONTROL DRUGS,
ANTI-CANCER DRUGS, DRUGS FOR RELIEVING
BLADDER PAIN, DRUGS FOR TREATING INTER-
STITIAL CYSTITIS, DRUGS FOR REDUCING TOXI-
CITY ASSOCIATED WITH CHEMOTHERAPY,
DRUGS FOR TREATING ORAL CANDIDIASIS,

DIETARY AND NUTRITIONAL SUPPLEMENTS,
AND DRUGS FOR USE IN THE FIELD OF UROL-
OGY AND ONCOLOGY; AND OSMOTIC PUMPS
FOR USE IN DELIVERING COUGH/COLD MEDI-
CATIONS AND FOR USE IN THE FIELD OF
UROLOGY AND ONCOLOGY, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 0-0-2000; IN COMMERCE 0-0-2000.

FOR: IMPLANTABLE DRUG DELIVERY DEVI-
CES FOR USE IN EXPERIMENTAL ANIMALS AND
FOR ADMINISTERING LEUPROLIDE IN THE
TREATMENT OF PROSTATE CANCER, IN CLASS
10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 0-0-2001; IN COMMERCE 0-0-2001.

OWNER OF U.S. REG. NOS. 1,409,074 AND
1,413,180.

THE DRAWING IS LINED FOR BLUE, BUT NO
CLAIM FOR COLOR IS MADE.

SN 75-378,154, FILED 10-23-1997.

PAUL F. GAST, EXAMINING ATTORNEY